IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11952 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKARAM KALLU SHAHU

Versus

JAIL SUPERINTENDENT

Appearance:

1. Special Civil Application No. 11952 of 2001

MS KACHHUVA for MS SONAL D VYAS for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 4.6.2001 passed by the Commissioner of Police, Surat City in exercise of power under Section 3

of the PASA Act. The order was executed on that very day as the detenu was in judicial custody in connection with seven offences registered against him relating to theft. The detaining authority observed that the petitioner's activities are that of a dangerous person and are detrimental to public order. The authority considered seven offences registered against the detenu as well as statements of two anonymous witnesses to come to this conclusion. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition.

3. Learned Advocate for the petitioner Ms. Kachhuva has restricted her argument to the ground that the powers under Sec. 3 are exercised without any basis. In support of her contention, it was pointed out that the detenu was in judicial custody when the order was passed and executed. It is contended that no bail application was given, and hence the authority's observation that the petitioner may obtain bail and may pursue his activities thereafter is only an inference which is legally not permissible. Ms. Kachhuva therefore urged that the petition may be allowed and the order in question may be quashed and set aside. In support of the argument, reliance is also placed on the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675.

4. Learned Assistant Government PleaderP Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contention raised before this Court, a plain reading of the detention order indicates that the detenu was in judicial custody in respect of all the registered offences. There is nothing to indicate that any application was given by the detenu for his release on bail. The inference is drawn by the detaining authority that the petitioner may obtain bail by applying for it and may pursue his activities after he is released from jail. Getting bailed out is different than applying for bail. The satisfaction recorded by the detaining authority therefore that the petitioner is immediately required to be detained in order to prevent

him from pursuing his activities is therefore without any basis and would stand vitiated. In the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that likelihood of detenu moving an application for bail is not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 4th June, 2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu Rajkaran Kallu Shahu be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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